



## PROBATION AND PAROLE BUREAU STANDARD OPERATING PROCEDURES

Procedure No.: P&P 60-13	Subject: <b>DNA TESTING/COLLECTION OF BIOLOGICAL SAMPLES</b>	
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Signature: /s/ Ron Alsbury	Revision Date: 11/01/01; 06/17/02; 03/14/03; 08/01/05	
	Effective Date: 06/01/00	

**I. BUREAU DIRECTIVE:** Probation and Parole Bureau employees will follow established procedures to ensure offenders are notified of, and fulfill, the requirement to give a biological sample for DNA testing in accordance with state law.

**II. AUTHORITY:**

*DOC 1.5.13 DNA Testing/Collection of Biological Samples*

*44-5-103, M.C.A. Definitions*

*44-6-101, M.C.A. Definitions*

*44-6-102, M.C.A. Establishment of DNA identification index*

*44-6-103, M.C.A. Collection of samples and maintenance of data*

*44-6-107, M.C.A. Expungement of DNA records*

*44-6-108, M.C.A. Confidentiality of records of DNA testing*

*46-18-202, M.C.A. Additional restrictions on sentence*

*46-23-215, M.C.A. Conditions of parole*

*46-23-502, M.C.A. Definitions*

**III. DEFINITIONS:**

**Biological Sample** means cheek cells removed by using a buccal swab of a type authorized by the Department or a vial or other container of blood.

**Buccal Swab** – means removing cheek cells by the means of a sterile swab.

**DNA** means deoxyribonucleic acid.

**DNA record** means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

**DNA testing** means DNA analysis of materials derived from the human body for the purposes of identification.

**Felony Offense** (*Definition for Offenders sentenced prior to April 7, 2005*) means any offense under Title 45, chapter 5 or 9, for which the maximum potential sentence under statute is death or imprisonment in a state prison for a term exceeding one year or burglary or aggravated burglary under 45-6-204. (See P&P 60-13 (A) DNA Sample Felony Guide For Offenders Sentenced Prior to April 7, 2005 for specific offenses requiring registration).

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**Felony Offense** (*Definition for Offenders sentenced or revoked after April 7, 2005*) means any offense under the Montana Code Annotated for which the maximum potential sentence under statute is death or imprisonment in a state prison for a term exceeding one year.

#### IV. PROCEDURES:

##### A. Applicability

- Adult or youthful offenders who were sentenced or in custody or parole supervision of the department on or after March 27, 1995, and were required to register for Sexual or Violent Offenses (46-23-502, M.C.A.-1999); youthful offender found under 41-5-1502 to have committed a sexual or violent offense, or under 46-18-202, MCA, *Additional restrictions on sentence*.
- A defendant ordered under 46-18-202 to provide a biological sample for DNA testing.
- Adult **Felony** Offenders (as defined in 44-6-101, M.C.A. – Sentenced prior to April 7, 2005) New felony offenses requiring offenders to give a biological sample were added to 44-6-103, MCA effective October 1, 2001. Offenders who commit and are convicted of the offenses listed in *P&P 60-13 (A) DNA Sample-Felony Guide for Offenders Sentenced Prior to 4/7/05* after October 1, 2001 are required to provide a DNA sample. **The statute is not retroactive for the new offenses listed if they were committed prior to October 1, 2001.**
- Adult **Felony** Offenders (as defined in 44-6-101, M.C.A.). Effective April 7, 2005, all felony offenders who are **sentenced or revoked** on or after this date will be required to complete DNA registration.

##### B. Offenders Incarcerated in Department Facilities

1. It is the responsibility of the department to collect biological samples from applicable offenders incarcerated in a facility administered by the department. The facility staff typically completes this function. However, upon discharge, parole, or placement in Community Corrections Program (ISP, CCP, or PRC), the IPPO's will verify that DNA testing has been completed. If the DNA registration has not been completed, the IPPO will make arrangements or will conduct the DNA testing prior to the offender's release from the institution. Collection Kits can be obtained by contacting the Department of Justice. The following procedure will apply:
  - a. Request the offender to provide a buccal swab.
  - b. If the offender is compliant, the procedure will be completed. If the offender refuses to provide a buccal swab, the IPPO or staff shall give a direct order to provide the buccal swab. The offender may not refuse on the grounds that the offender may refuse medical treatment. This is not a medical treatment procedure. If the offender continues to refuse this direct order the following may occur:
    - IPPO or staff will write up a disciplinary report on the offender for a severe infraction in accordance with facility disciplinary policy.
    - If the refusing offender is discharging to a probationary sentence, the IPPO will immediately begin procedures to have the suspended or deferred sentence revoked pursuant to 44-6-103(4) M.C.A.

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- If the refusing offender is discharging their sentence, the IPPO shall refer the case immediately to department legal staff who will pursue legal remedies.
  - c. Collect a clean and clean thumbprint from the offender on the card provided in the DNA sampling kit.
  - d. Fill out all information required on the information card. Enter DOC ID# in addition to the SID (State Identification) number (can be found in ACIS screen #24). In event that the SID number is not available, a social security number can be inserted.
  - e. Place the buccal swab sample, information card, and thumbprint in the shipping envelope provided.
  - f. Send the envelope “certified mail” to the Montanan DNA laboratory, Forensic Science Division. Alternative delivery methods such bulk package mailing and personal delivery may be used so long as the proper chain of evidence is observed.
  - g. Record in the offender’s main file the date and name of the person taking the DNA sample using *P&P 60-13 (C) DNA Verification Letter*. A copy of this form should be forwarded to prison records for entry on the Management Information System (ACIS/Profiles).
2. DNA records are to be considered confidential criminal justice information subject to dissemination provisions of Title 44, Chapter 5, Montana Code Annotated.
  3. If a person is not incarcerated in a facility administered by the department, the county sheriff is responsible for collection of all DNA samples.

**C. Offenders on Probation, Parole or Intensive Supervision Program (ISP).**

1. When an offender is sentenced to Probation and Parole supervision as a probationer or placed on ISP as a DOC Inmate, the offender is required to provide a biological sample for DNA testing for felony offenses committed after October 1, 2001 per 44-6-103, MCA, all felony offenders sentenced or revoked on or after April 7, 2005, or as ordered by the Judge. At Sign Up the supervising P & P Officer shall inform the offender of the requirement in writing using *P&P 60-13 (B) Requirement to Provide Biological Sample*. The statute requires the sheriff or designated entity or person to obtain such biological sample from offenders on probation or parole status. Refer to *P&P 60-13 (A) DNA Sample-Felony Guide for Offenders Sentenced Prior to 4/7/05* to determine which offenders on probation or parole must provide a sample prior to April 7, 2005. All felony offenders that are sentenced or revoked after April 7, 2005 will be required to complete DNA testing.
2. Offenders incarcerated in Department facilities or programs are required to provide a biological sample prior to being paroled. Officers will confirm with the IPPO or Prerelease staff that the offender being paroled has complied with the statute prior to release from a secure correctional facility or Prerelease Center.
3. Failure to provide the biological sample is grounds for the revocation of a suspended or deferred imposition of sentence and/or revocation of parole and/or disciplinary sanctions on ISP or PRC. Offenders will be required to provide proof they have given the sample and if

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the offender fails to provide the biological sample for DNA testing within 10 working days, the P & P Officer shall file a probation revocation with the sentencing court or conduct an Adult Discipline Hearing with an inmate on ISP or in Prerelease. If it is determined that a parolee has not complied with the statute, the Officer may prepare a *Report of Violation* per P&P 140-2 Preliminary (On-Site) Hearing or P&P 140-1 Disciplinary Hearing if on ISP or in PRC as an inmate.

- V. **CLOSING:** Questions concerning this procedure shall be directed to the Regional Administrator or designee.

**Form/Guides**

P&P 60-13 (A)

DNA Sample-Felony Guide For Offenders Sentenced Prior To 4/7/05

P&P 60-13 (B)

Requirement to Provide Biological Sample Letter

P&P 60-13 (C)

Documentation of DNA Test Collection